Supreme Court, U. S.
FILED
AUG 16 1976
MICHAEL RODAK, JR., CLE

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1976

NO. 76-236

CALVIN T. SHERARD
Petitioner

V.

R. B. SHELTON, Director
WAYNE COUNTY DEPARTMENT OF SOCIAL SERVICES
ON BEHALF OF: BETTYE J. SHERARD,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT

CALVIN T. SHERARD
In Pro Per
20029 Roselawn
Detroit, Michigan
48221

INDEX

	PAGE
Opinions Below.....	1
Jurisdiction.....	2
Question Presented.....	3
Constitutional and Statutory Provisions Involved.....	3
Statement of Case.....	3
Reasons for Granting Writ.....	5
1. Certiorari should be granted to resolve Court Order entered without giving petitioner a hearing, and in violation of rights guaranteed by the Fourteenth Amendment of the U.S. Constitution.....	5
2. To Review States' Action in Violation of the Fourteenth Amendment of the U.S. Constitution.....	5
Conclusion.....	6
Appendix	
A. Judgment of Michigan Supreme Court denying Application for Leave to Appeal	
B. Order of Michigan Appeals Court Dismissing Appeal	

PAGE

C. Judgment of Michigan Appeals Court Denying Stay of Proceedings .....

D. Order of Wayne County Circuit Court Modifying Family Support Order .....

E. Order of Wayne County Circuit Court for Family Support

.....

CITATIONS

CASES

Holden v. Hardy, 169 U.S. 366 (1898), 40..... 6

Oliver, in re, 333 U.S. 257 (1948), 43, 197..... 5

Powell v. Alabama, 287 U.S. 45 (1932)..... 5

Stuart v. Palmer, 74 N.Y..... 4

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1976

NO._____

CALVIN T. SHERARD, Petitioner

v.

R. B. SHELTON, Director
WAYNE COUNTY DEPARTMENT OF SOCIAL SERVICES
ON BEHALF OF: BETTYE J. SHERARD

Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE MICHIGAN SUPREME COURT

To the Honorable, Chief Justice and Associate Justices of the Supreme Court of the United States:

Calvin T. Sherard, the Petitioner herein prays that a Writ of Certiorari issue to review the Judgment and opinion of the Michigan Supreme Court entered in the above entitled case on June 4, 1976.

OPINIONS BELOW

The June 4, 1976 opinion of the Michigan Supreme Court, whose judgment is herein sought to be reviewed, is unreported and is reprinted in Appendix A-1. The December 1, 1975 Judgment of Michigan Court of Appeals dismissing petitioners appeal for an Order to Invalidate Wayne County Circuit Court Order and is re- printed in Appendix B, hereto, infra page B-1.

The September 29, 1975 judgment of Michigan Court of Appeals denying petitioners motion for a stay and reprinted in Appendix C, hereto infra page C-1. The July 18, 1975, Wayne County Circuit Court Order to Modify Family Support Order on petitioners motion and is reprinted in Appendix D, infra page D-1. The September 13, 1974 Wayne County Circuit Family Support Order that came out of a Complaint filed and signed by the Director of Wayne County Social Services, R.B. Shelton and entered without a hearing is reprinted in Appendix E, infra page E-1.

JURISDICTION

The Order of Wayne County Circuit Court was entered September 13, 1974 without giving petitioner a hearing on the Complaint, in Case #74-011-235-DS. A Judgment to Modify said Order was entered July 18, 1975 by Wayne County Circuit Court. A timely Claim of Appeal

was filed August 1, 1975 in Michigan Appeals Court after learning of violation of due process.....appeal dismissed December 1, 1975.

A timely application for Leave to Appeal was filed October 17, 1975 in Michigan Supreme Court.....dismissed June 4, 1976. This Petition for Certiorari was filed within thirty days of that date. This Courts jurisdiction is invoked und r 28USCS § 1257 (3).

QUESTION PRESENTED

Is a court order that was entered without giving the petitioner an opportunity to be heard, and in violation of his due process guaranteed by the Fourteenth Amendment to the U.S. Constitution enforceable?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the first section of the Fourteenth Amendment to the Constitution of the United States, which provides as follows:

No State shall make or enforce any law which shall abridge the priviledges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF CASE

This is a family support action that was filed by R. B. Shelton, Director of

Wayne County Social Services in behalf of Petitioner's wife, Bettye Sherard. Even though Bettye Sherard closed her Aid to Dependent Children case #K8230367A August 28, 1974, both parties were ordered to appear before the Honorable Nathan Kaufman on September 13, 1974 for a hearing on the Complaint.

When both parties appeared in Judge Kaufman's Courtroom, they identified themselves to Assistant Prosecutor Bernard Ginsberg of the Friend of the Court, Wayne County Circuit Court.

Assistant Prosecutor Ginsberg gave petitioner's wife permission to leave to return to work. Later, the Assistant Prosecutor took the petitioner to a back room where he told the petitioner that he had been ordered to pay $22.50 per week per child, (2), by Judge Kaufman.

When Petitioner asked to be taken before Judge Kaufman, Assistant Prosecutor Ginsberg said, "I can't, the Judge has already ruled, I then left. This Court Order has been enforced since date of entry, September 13, 1974, and is pursuant to Stuart v. Palmer, 74 N. Y.

I attribute Assistant Prosecutor Ginsberg's action to a confrontation we had over a court order for attorney fees in a previous divorce action, #215-833, which I won.

If I had been given an opportunity to be heard, I could have proven my innocence.

REASONS FOR GRANTING WRIT

1. Certiorari Should Be Granted to Resolve Court Order Entered Without Giving Petitioner a Hearing, And In Violation of Rights Guaranteed by the Fourteenth Amendment of the U.S. Constitution.

   The first step in the judicial process is normally a hearing at which time the Defendant is examined; the presiding magistrate should dispose of the case directly, and either dismiss the charge, or find the defendant guilty.

   In Powell v. Alabama, 287 US. 45(1932). Justice Sutherland stated: "It never has been doubted by this Court, or any other, so far as we know, that notice and hearing are preliminary steps essential to the passing of any enforcable judgment.

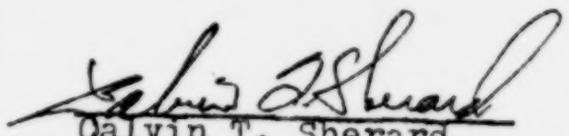
2. To Review States' Action in violation of the Fourteenth Amendment of the U.S. Constitution.

   The "due process" clause of the Fourteenth Amendment assures the right to a "public trial" in state proceedings. Oliver, in re, 333 U.S. 257 (1948), 43, 197.

"There are certain immutable principals of justice which inhere in the very idea of free government which no member of the Union may disregard," Holden v. Hardy, 169 U.S. 366 (1898), 40.

Conclusion

Wherefore, petitioner respectfully prays that a Writ of Certiorari be granted.



Calvin T. Sherard
20029 Roselawn
Detroit, Michigan

August 6, 1976

APPENDICES

APPENDIX A

MICHIGAN SUPREME COURT

NO. 57629

WAYNE COUNTY DIRECTOR OF SOCIAL SERVICES
ON BEHALF OF BETTYE JOYCE SHERARD,

Appellant,

v.

CALVIN T. SHERARD,

Appellee.

APPEAL From MICHIGAN APPEALS COURT

Thomas Giles Kavanagh, Chief Justice,
G. Mennen Williams,
Charles L. Leven,
Mary S. Coleman,
John W. Fitzgerald,
Lawrence B. Lindemer,
James L. Ryan, Associate Justices

Filed on June 4, 1976

ORDER

On Order of the Court, the application in pro per for leave to appeal is considered and the same hereby is DENIED, because the appellant has failed to pursuade the Court that the question presented should be reviewed by this Court.

Justice Levin dissents as follows:

I would remand this cause for an evidentiary hearing to determine whether Calvin Sherard was denied an opportunity for a hearing before entry of the Order of September 13.

For the Court:

(signed) Cobin R. Davis
Deputy Clerk

APPENDIX B

COURT OF APPEALS OF THE STATE OF MICHIGAN

NO. 25490

BETTYE JOYCE SHERARD,
Appellee,

v.

CALVIN THOMAS SHERARD,
Appellant.

APPEAL FROM WAYNE COUNTY CIRCUIT COURT
Present, The Honorable T. John Lesinski

Vincent J. Brennan
Richard M. Maher
Presiding Judges

Filed December 1, 1975

ORDER

In this cause a motion to dismiss the appeal having been filed by the Plaintiff-Appellee, and an answer in opposition thereto having been filed by the Defendant-Appellant, and due consideration thereof having been had by the Court,

IT IS ORDERED that a Motion to Dismiss be, and the same is hereby GRANTED and this Appeal is dismissed for the reason that the Order of July 18, 1975, is in

actuality an Order denying the defendant-appellant's petition to modify family support order and is therefore a post-judgment order appealable by the filing of an application for leave to appeal pursuant to GCR 1963, 806.2,

IT IS FURTHER ORDERED that this dismissal is without prejudice to the filing of a delayed application for leave to appeal pursuant to GCR 1963, 806.4,

IT IS FURTHER ORDERED that in the interest of efficient judicial administration, that is is suggested that any further matters concerning the subject matter of this cause be raised in the pending divorce proceeding in the Wayne County Circuit Court, being Wayne County No. 75-059534 DM which has jurisdiction to consider these matters.

For the Court:

(signed) Ronald L. Dzierbicki
Clerk of the Court

APPENDIX C

COURT OF APPEALS OF THE STATE OF MICHIGAN

NO. 25490

R. B. SHELTON, Wayne County Director of Social Services, on Behalf of:
Bettye Joyce Sherard,

Apellee,

v.

CALVIN THOMAS SHERARD

Appellant.

APPEAL FROM WAYNE COUNTY CIRCUIT COURT

Present, The Honorable T. John Lesinski

Vincent J. Brennan
Richard M. Maher
Presiding Judges

Filed September 29, 1975

ORDER

In this cause a Motion is filed by appellant for Stay of Proceedings, and an answer in opposition thereto having been filed, and due consideration thereof having been had by the Court

IT IS ORDERED that the motion for stay of proceedings be and the same is hereby DENIED.

For the Court:

(Signed) Ronald L. Dzierbicki
Clerk of the Court

APPENDIX D

WAYNE COUNTY CIRCUIT COURT

NO. 74-011 235-DS

BETTYE SHERARD
Plaintiff

v.

CALVIN SHERARD
Defendant

APPEAL FROM WAYNE COUNTY CIRCUIT COURT
Present, The Honorable Myron H. Wahls

Entered July 18, 1975

ORDER MODIFYING FAMILY SUPPORT ORDER

This action having been brought on to be heard upon the defendant's motion, and the Friend of the Court having filed a report and recommendation of the parties being duly informed of the recommendation and date of hearing and the Court being fully advised in the premises:

IT IS HEREBY ORDERED that the defendant, CALVIN SHERARD, shall be required to pay support under the Family Support Order, by means of a Wage Assignment of $50.00 per week, of which $5.00 shall be applied toward the arrearage.

IT IS FURTHER ORDERED that the other provisions of the Family Support Order heretofore entered shall remain in full force and effect.

For the Court:

(Signed) Myron H. Wahls
Circuit Judge

Frederick C. Hailer P14523
Friend of the Court

APPENDIX E

WAYNE COUNTY CIRCUIT COURT

NO. 74-011-235-DS

R. B. SHELTON, Wayne County Director of Social Services, On Behalf of: Bettye Sherard

Plaintiff

v.

CALVIN SHERARD

Defendant

Present, The Honorable Nathan Kaufman

Entered September 13, 1974

ORDER

IT IS ORDERED that defendant pay to the office of the Friend of the Court, 600 Randolph Street, Detroit, Michigan 48226, commencing 09/13/74, the sum of $22.50 per week as support for each of the two minor children, KAREN SHERARD born 09/11/61, STEPHANIE SHERARD born 07/28/68, and continuing until each child attains the age of eighteen (18) years or until further order of the Court;

IT IS FURTHER ORDERED that the defendant husband shall provide the necessary medical, dental and hospital expenses and

maintain hospitalization insurance for the plaintiff until further order of the court and for each child until each child attains the age of eighteen (18) years or until further order of the Court;

IT IS FURTHER ORDERED that defendant husband shall pay to the Friend of the Court, the sum of $1.50 per month, payable semi-annually in advance on January 2nd and July 2nd hereafter while the order for support is operative. Initial payment for months preceding next regular due date shall be made forthwith.

(Signed) Nathan Kaufman
Circuit Judge

Supreme Court, U. S.
FILED
SEP 8 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-236

CALVIN T. SHERARD,
Petitioner,
v.
R. B. SHELTON, Director,
WAYNE COUNTY DEPARTMENT OF SOCIAL SERVICES.
ON BEHALF OF: BETTYE J. SHERARD,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MICHIGAN SUPREME COURT

BRIEF FOR RESPONDENT IN OPPOSITION

FRANCIS B. CROWLEY
Attorney for Respondent
1407 City-County Building
Detroit, Michigan 48226
Phone: (313) 224-5262

Interstate Brief & Record Co., 1615 Abbott St., Detroit, Michigan 48216
962-8745

INDEX

	Page
Opinion Below	1
Jurisdiction	1
Question Presented	2
Constitutional Question Involved	2
Statement of Facts	2
Argument of Law	3
Conclusion	5

Appendix

AA. Order of Probation, Wayne County Circuit Court, January 7, 1975	6
BB. Order of Probation, Wayne County Circuit Court, March 24, 1975	7
CC. Michigan General Court Rules (GCR, 1963) 803.1, 803.2, 806.1 806.2	8

CITATIONS

Cases:

Department of Mental Hygiene of California v Kirchner, 380 US 194, 85 S Ct 871, 13 L Ed 2d 753 (1965)	4
Henry v State of Mississippi, 379 US 443, 85 S Ct 564, 13 L Ed 2d 408 (1965)	4
Jankovich v Indiana Toll Road Commission, 379 US 487, 85 S Ct 493, 13 L Ed 2d 439 (1965)	4
Waters-Pierce Oil Co v Texas, 212 US 86, 29 S Ct 220, 53 L Ed 417 (1908)	4

Page

Statutes:

28 USC §1257 (3) 2,5

Miscellaneous:

Michigan General Court Rules

GCR, 1963, 803.1 2

GCR, 1963, 806.1 2,3,4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-236

CALVIN T. SHERARD,
Petitioner,
v.
R. B. SHELTON, Director,
WAYNE COUNTY DEPARTMENT OF SOCIAL SERVICES,
ON BEHALF OF: BETTYE J. SHERARD,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MICHIGAN SUPREME COURT

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

Respondent does not question petitioner's statement of the opinion of the court below but takes exception to petitioner's statement that the judgment of the trial court was without a hearing.

JURISDICTION

From the hereinafter contained "Statement of Facts" respondent asserts that no federal issue is herein involved. The determinations of the state appellate courts

were based solely on state appellate procedure. Basis for jurisdiction stated in the petition under 28 USC §1257 (3) does not lie, there being no federal question involved.

QUESTION PRESENTED

Petitioner misstates the nature of the legal issue sought to be reviewed. The only issue ruled on by the state appellate court was: "Does petitioner have an appeal as a matter of right from a trial court order modifying a prior order of support?"

CONSTITUTIONAL ISSUE INVOLVED

Respondent asserts that no constitutional issue is involved.

STATEMENT OF FACTS

Petitioner seeks review of a denial of an attempted appeal to the Michigan appellate courts involving an alleged denial of due process. The initial case was begun by the respondent herein, under the Michigan Family Support Act (MCLA 552.451-9), in April 1974. After service of Complaint and Summons and at a trial court hearing on September 14, 1974 a Judgment or Order for Support was entered. This being a "final judgment or order" under Michigan court rule, an appeal as a matter of right may have been taken[1] within twenty days[2] of September 14, 1974. No appeal was taken from this order. Subsequently, on two separate occasions, petitioner was brought before the trial court and held in contempt for failure to comply with said support order of

---

[1] GCR 1963, 806.1 (Appendix CC)

[2] GCR 1963, 803.1 (Appendix CC)

September 14, 1974 and put on probation (see respondent's Appendix "AA", Order of Contempt, January 7, 1975; Appendix "BB", Order of Contempt, March 14, 1975). No appeals were taken from these contempt orders. Later, the petitioner sought modification of the September 14, 1974 support order. As a result of his petition an order modifying the support order was entered July 18, 1975. Petitioner filed a claim of appeal as of right from this modification order of July 18, 1975. At this time, for the first time, petitioner raised as an issue the alleged denial of due process at the time the September 14, 1974 order was entered. This attempted appeal was denied on motion by the Michigan Court of Appeals. The court ruled that it did not have jurisdiction to hear an appeal from an order modifying a support order as a matter of right. In so denying petitioner's claim of appeal as of right, the court did so without prejudice and advised him of the proper procedure for filing an application for leave to appeal.

ARGUMENT

Respondent asserts that no federal question is presented to this court, therefore the Petition for Writ of Certiorari must be denied.

The issue now raised by the petitioner, an alleged denial of due process, was not properly submitted nor passed upon by the Michigan appellate courts. The sole basis for the denial of petitioner's attempted appeal was one of state appellate procedure under the Michigan court rules. The Michigan Court of Appeals ruled that the petitioner's claim of appeal as of right could not be taken from a modification order under GCR 1963, 806.1. The proper steps for an application for leave to appeal were set forth by the court in its order (Petitioner's Appendix

A). No federal issue was involved in such determination. The jurisdiction of the United States Supreme Court to review the decisions of a state court is not that of a general reviewing of a court in error, but is limited to the specific instances of a denial of federal rights. *Waters-Pierce Oil Co v Texas*, 212 US 86, 97; 29 S Ct 220; 53 L Ed 417, 424 (1908). The Supreme Court is always wary of assuming jurisdiction of a state court unless it is plain that a federal question is necessarily presented. It has jurisdiction to review a state court decision on certiorari only if a federal ground was the sole basis for the decision. *Department of Mental Hygiene of California* v *Kirchner*, 380 US 194, 85 S Ct 871; 13 L Ed 2d 753 (1965). The court does not have jurisdiction even where a federal question exists, where a state ground also exists and such is independent of the federal grounds and adequate to support the judgment. *Jankovich* v *Indiana Toll Road Commission*, 379 US 487, 85 S Ct 493; 13 L Ed 2d 439 (1965). This rule applies not only to state substantive grounds, but also to procedural grounds. *Henry* v *State of Mississippi*, 379 US 443, 85 S Ct 564; 13 L Ed 2d 408 (1965) (reh denied 380 US 962, mot den 381 US 908).

In the present case, the requirements of the court rule on which the state courts based their orders (GCR 1963, 806.1) are not mere "technicalities", but rather involve basic procedure and organization of the Michigan appellate courts, necessary for efficient administration of justice. Furthermore, petitioner's attempted appeal was dismissed without prejudice to his filing application for leave to appeal in this matter. Additionally the appellate court informed the petitioner of the proper procedure for making application for leave to appeal under Michigan court rule.

CONCLUSION

The decisions of the Michigan appellate courts involved no federal questions. Jurisdiction for review by the United States Supreme Court under 28 USC §1257(3) is not present. The Petition for Writ of Certiorari should therefore be denied.

Respectfully submitted,

FRANCIS B. CROWLEY
Attorney for Respondent
1407 City-County Building
Detroit, Michigan 48226
(313)-224-5262

APPENDIX AA

ORDER FOR PROBATION

Wayne County Circuit Court

No. 74-011-235-DS

It appearing to the Court that the above named respondent was duly served with an order to show cause and did appear in this Court on January 3, 1975, and it further appearing to the Court that the said respondent has failed and neglected to comply with the corrected order of this Court providing for the payment of support and has failed to purge himself of the contempt charged in said petition.

It is therefore Ordered and adjudged that the above named respondent Calvin Sherard be and he is hereby adjudged guilty of contempt of court.

It is further Ordered that the above named respondent be placed on probation to the Friend of the Court for the period of one (1) year, and during such period of probation the above named respondent Calvin Sherard shall pay the sum of Forty-Five ($45.00) Dollars per week to the Friend of the Court.

Act 138, P.A. 1966 Family Support Act.

/s/ JAMES MONTANTE
Circuit Judge

APPENDIX BB

ORDER FOR PROBATION

(Wayne County Circuit Court)

No. 74-011-235-DS

Present, the Honorable Myron H. Wahls.

It appearing to the Court that the above named respondent was duly served with an order to show cause and did appear in this Court on March 14, 1975, and it further appearing to the Court that the said respondent has failed and neglected to comply with the order of this Court providing for the payment of support and has failed to purge himself of the contempt charged in said petition.

It is therefore Ordered and adjudged that the above named respondent Calvin Sherard be and he is hereby adjudged guilty of contempt of court.

It is further Ordered that the above named respondent be placed on probation to the Friend of the Court for the period of one (1) year, and during such period of probation the above named respondent Calvin Sherard shall pay the sum of Fifty ($50.00) Dollars per week to the Friend of the Court.

Act 138, P.A. 1966, Family Support Act

/s/ MYRON H. WAHLS
Circuit Judge

APPENDIX CC

MICHIGAN GENERAL COURT RULES

Rule 803 Time for Taking Appeal.

1. Appeal as of Right. Appeal to the Court of Appeals as of right in civil cases shall be taken not later than 20 days after the entry of the judgment or order appealed from, or within 20 days after the entry of an order denying a motion for a new trial or rehearing, provided such motion is made and served (a) within 20 days after the entry of the judgment or order appealed from, or (b) with such further time as may be allowed by the trial court during such 20 day period. In criminal proceedings, appeal as of right shall be taken not later than 60 days after the entry of the judgment or order appealed from or after the entry of an order appointing appellate counsel for an indigent defendant pursuant to sub-rule 785.4 (1), or within 60 days after the entry of any order denying a motion for new trial, provided such motion is made and served (a) within 60 days after the entry of judgment or order appealed from, or (b) within such further time as may be allowed by the trial court during such 60-day period. The time herein provided is jurisdictional in appeals as of right.

2. Appeal Upon Leave. An appeal upon leave shall be deemed to be taken by filing of claim of appeal and paying the fees required by sub-rule 803.5 within 20 days after notice of entry of order allowing appeal has been mailed to counsel by the clerk of the Court of Appeals.

Rule 806 Appeals by Right and by Leave.

1. Appeal as of Right. In all criminal and civil matters, an aggrieved party shall have a right to appeal from all final judgments or final orders from the Circuit

Courts, Court of Claims and Recorder's Court, except judgments on ordinance violations in the Traffic and Ordinance Division of Recorder's Court. Appeals from final judgments from all other courts and from convictions for ordinance violations in the Traffic and Ordinance Division of the Recorder's Court shall be taken to the Circuit Courts, upon which further review may be had only upon application for leave to appeal granted by the Court of Appeals. Final judgment or interlocutory orders of courts which by law are appealable to the Circuit Court only upon leave or on appeal are to be tried de novo in the Circuit Court shall continue to be tried in the Circuit Court. See sub-rule 701.1. Appeals from final or interlocutory judgments of the District Court, Common Pleas Court, or judgments in ordinance cases in the Traffic and Ordinance Division of Recorder's Court shall be taken to the Circuit Court in which such court is located. Appeals as of right shall be taken in accordance with and within the time prescribed by these rules.

2. Appeal by Leave. The Court of Appeals may grant leave to appeal from:

(1) Final or interlocutory judgments or orders of administrative agencies or tribunals which by law are appealable to the Court of Appeals or the Supreme Court.

(2) Any judgment, order, act or failure to act by the Circuit Courts, Court of Claims, and Recorder's Court, except on ordinance violations in the Traffic and Ordinance Division of Recorder's Court, which is not a final judgment appealable as of right.

(3) Orders in domestic relations cases for temporary alimony, payment of expenses, or support or custody of minors entered prior to final judgment shall be deemed interlocutory in nature and appealable by leave.

(4) Final judgments entered by the circuit court on appeals from any other courts.

(5) Such other matters as are provided by the rules of the Supreme Court or other laws.

In no event shall leave to appeal be granted later than 18 months from the entry of the order or judgment appealed from in any civil matter.